

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1774 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

DHARMISHTHABEN V PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioner
GOVERNMENT PLEADER for Respondent Nos. 1,2 & 3
MR SR SHAH for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/06/1999

C.A.V. JUDGEMENT

1. The prayer of the petitioner in this writ
petition is for quashing the order dated 6.3.1999 passed
by the State Government in Review Application moved by
the respondent No.4 in this petition.
2. Brief facts are that the petitioner is proprietor
of Ekta Touring Cinema in village Sachin, Dist. Surat.

She moved an application under Rule : 3 of the Bombay Cinema Regulation Act, 1953 for grant of licence to the respondent No.3, who is Licensing Authority. Formalities required under the Act and the Rules were observed by the respondent No.3. Since no objection was filed by any person despite publication of notice in the news paper no objection Certificate was issued by the respondent No.3 to the petitioner. The respondent No.4 is proprietor of Sarasvati Cinema and is rival in trade of the petitioner who is running Ekta Touring Cinema. He too did not file any objection to the grant of no objection certificate to the petitioner. He, however, filed revision challenging the order dated 8.6.1998. The revision was contested by the petitioner. The respondent No.2 had dismissed the revision on 3.10.1998. Upon rejection of revision application the respondent No.3 granted licence to the petitioner for running Ekta Touring Cinema for a period upto 31.12.1999. This was done under Rule : 103 of the Rules framed under the above Act. At the instance of respondent No.4 public interest litigation was initiated before this Court through Special Civil Application No.8218 of 1998 which was filed by one Harshadray Chhotubhai Desai. The Division Bench dismissed the aforesaid Special Civil Application on 10.12.1998. The respondent No.4 being aggrieved against the order of the State Government dated 3.10.1998 rejecting his revision application preferred Review Application under Section 8-C of the Act before the respondent No.1 on 14.10.1998. This Review Application was allowed without notice to the petitioner through the impugned order. It is in this background that the petitioner has challenged the impugned order, Annexure : A to the writ petition, passed on 6.3.1999.

3. In short the grounds of challenge are (i) that the respondent No.4 had no locus standi to file Review Application; (ii) the second ground of challenge is that no notice was issued to the petitioner of the Review Application and the impugned order was passed behind her back without affording any opportunity of hearing to her, hence the order is vitiated by principles of natural justice; (iii) the third ground of attack is that the licence period is valid upto 31.12.1999, hence through the impugned order the conditions of licence could not be varied or modified; (iv) the last attack has been that since no objection certificate stands in favour of the petitioner and the licence is also valid upto 31.12.1999 the reviewing Authority could not have interfered with the orders of revising Authority and that the order of the Division Bench in Special Civil Application No.8218 of 1998 is not in conflict with the order of the Revising

Authority.

4. On the point of locus of respondent No.4 the learned Counsel was heard simply on the ground that because he has been arrayed in this writ petition as respondent No.4 he has right of hearing. Granting right of hearing in this writ petition does not amount to holding that he was person aggrieved who could have filed revision or review application within the scope of Section 8-B or Section 8-C of the Bombay Cinema Regulation Act, 1953. Admittedly no objection was filed by the respondent No.4 to the notice issued by the Licensing Authority which was published in news paper. What to say of respondent No.4 no other person filed any objection against the notice issued by the Licensing Authority. It was in this backdrop that No objection Certificate was issued to the petitioner. The No Objection Certificate issued by the Mamlatdar was challenged by the respondent No.4 in Revision under Section 8-B of the Act. The revision was apparently incompetent because the respondent No.4 cannot be said to be a person aggrieved within the meaning of Section 8-B aforesaid. It was not suo-motu action for entertaining revision by the State Government. On the other hand revision application was entertained at the instance of respondent No.4. The question is whether the respondent No.4 was a person aggrieved from the order of the Licensing Authority. By no stretch of imagination the respondent No.4 can be said to be person aggrieved from the order of the Licensing Authority granting No Objection Certificate to the petitioner. The reasons are that - firstly the licence or No Objection Certificate was not applied by the respondent No.4 hence any order in favour of the petitioner cannot be said to be an order from which the respondent No.4 was aggrieved; secondly the respondent No.4 did not file any objection in response to the publication of notice at the instance of Licensing Authority. Consequently a person who did not file objection at the earliest opportunity cannot be said to be a person aggrieved from the order of the Licensing Authority. The Revising Authority in its order, Annexure : B to the writ petition, has discussed plea of locus standi in Para (C) of the order and it was rightly observed that the respondent No.4 had no locus standi to file revision. The revision was dismissed on merits also. Since the plea of locus standi was considered by the Revising Authority it will be deemed that this was one of the grounds for dismissing the revision. If the revision filed by a person who was not aggrieved from the order of the Licensing Authority was dismissed by the State Government under Section 8-B of the Act he cannot

be said to be a person aggrieved from such order passed by the State Government for the purpose of review under Section 8-C of the Act. The respondent No.4 cannot be heard to say that he was a person aggrieved because his revision was dismissed by the State Government. Inter-alia the revision application was dismissed by the State Government on the ground that the respondent No.4 was not aggrieved person from the order of the Licensing Authority. Consequently the order of the Reviewing Authority as contained in Annexure : A is without jurisdiction inasmuch as it could not be entertained since it was filed by a person who cannot be said to be person aggrieved within the meaning of Section 8-C of the Act. This itself is sufficient ground for quashing the impugned order.

5. It may also be mentioned that the petitioner was a proper party in the review petition and notice of hearing of review petition should have been issued to the petitioner. After the order was passed by the Licensing Authority in favour of the petitioner and if that order was sought to be quashed or was proposed to be quashed it was incumbent for the authority exercising the powers of review to issue notice to the petitioner. An order which was passed behind back of the petitioner without affording any opportunity of hearing to her is not only violative of principles of natural justice, but also violative of fundamental procedure for hearing review application. On the one hand review application was entertained at the instance of a person who was not a person aggrieved from the order of the Licensing Authority and at the same time no notice was issued to the petitioner who obtained an order in her favour from the Licensing Authority. For this reason also the impugned order cannot be sustained.

6. It may also be mentioned that from the Licence, Annexure : C, it appears that it is valid upto 31.12.1999 vide Para : 28 of the Licence. Since the licence is current and valid upto 31.12.1999 its terms and conditions could not be modified or varied by the Reviewing Authority. Likewise from Para : 22 of the licence it is clear that the Licence holder should not exhibit any cinematograph or movie after 1.00 a.m. of the night. I have gone through this licence and was unable to find that there was any restriction for exhibiting only one show on a day. On the other hand learned Counsel for the petitioner contended that fees for exhibiting three shows in a day was collected and licence was issued accordingly. Be that it may, para : 22 of the licence simply puts restriction not to exhibit

movie after 1.00 a.m. in the night. The order of the Reviewing Authority restricting petitioner's right to exhibit one show in a day is in clear violation of subsisting licence in favour of the petitioner.

7. My attention was also drawn to the order of the Division Bench in Special Civil Application No.8218 of 1998. Learned Counsel for the petitioner contended that there is some clerical mistake in the judgment inasmuch the period of six months on page : 3 should have been period of 12 months. In this Judgment the Division Bench made following observations :

"The petitioners have also not raised ny objection at the time when the notice was published regarding the construction of the cinema hall. Therefore, we are not inclined to interfere with the licence at present granted to the 4th respondent. The licence is granted for a period of six months. On expiry of the present licence, the licensing authority, the third respondent, shall hear the 4th respondent and the petitioners and then only decide whether the further licence can be granted or renewed in favour of the 4th respondent. "

The period of six months mentioned in this order seems to be due to some clerical or typographical error inasmuch as para : 28 of the licence (Annexure : C) shows that the licence is valid upto 31.12.1999. The Division Bench therefore held that after the expiry of present licence the Licensing Authority was to hear as directed in the concluded portion of the judgment. The words "on the expiry of present licence" make it clear that the Division Bench took into consideration the period for which the present licence is current and this period according to the licence deed is current upto 31.12.1999. Consequently this order is of little help to the respondent No.4. It is further clear from the order of the Division Bench that the licence granted in favour of the petitioner was not interfered with. The respondent No.4 was not a party to that writ petition. However, since the respondent No.4 did not file any objection to the grant of No Objection Certificate before the Licensing Authority within the stipulated period mentioned in the notice, this case can be said to be identical with the case of the petitioners in Special Civil Application before the Division Bench.

8. For the reasons stated above the impugned order, Annexure : A to the writ petition, passed on 6.3.1999 is

illegal and invalid, hence it cannot be sustained. It has therefore to be quashed. The writ petition therefore succeed and is hereby allowed. The impugned order at Annexure : A dated 6.3.1999 passed by Additional Chief Secretary, Information and Broadcasting Department is hereby quashed. Parties to bear their own cost.

sd/-

Date : June 25, 1999 (D. C. Srivastava, J.)

sas